



PUBLIC UTILITIES COMMISSION

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SAN FRANCISCO, CA 94102-3298

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TO PARTIES OF RECORD IN RULEMAKING 02-01-011

This is the proposed decision of Administrative Law Judge (ALJ) Pulsifer. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed either electronically pursuant to Resolution ALJ-188 or with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Pulsifer at trp@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ PHILIP SCOTT WEISMEHL forAngela K. Minkin, Chief
Administrative Law Judge

ANG:hl2

Attachment

Decision **PROPOSED DECISION OF ALJ PULSIFER** (Mailed 4/3/2007)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding the
Implementation of the Suspension of Direct
Access Pursuant to Assembly Bill 1x and
Decision 01-09-060.

Rulemaking 02-01-011
(Filed January 9, 2002)

**OPINION GRANTING PETITION OF PACIFIC GAS AND ELECTRIC COMPANY,
SAN DIEGO GAS & ELECTRIC COMPANY, AND SOUTHERN CALIFORNIA
EDISON COMPANY FOR MODIFICATION OF DECISION 06-07-030**

This decision grants the Petition for Modification of Decision (D.) 06-07-030, filed on November 20, 2006, by Pacific Gas and Electric Company (PG&E) on behalf of itself, San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) (jointly, the IOUs). The purpose of the petition for modification is to propose protocols for “new load [cost responsibility surcharge] CRS exemptions.” (See, D.06-07-030, Ordering Paragraph 21.)

As noted in D.06-07-030, “new load” of publicly-owned utilities (POUs) not named in PG&E’s Bypass Report but “serving at least 100 customers as of July 10, 2003” are exempt from the Department of Water Resources (DWR) Power Charge up to a cap of 80 Megawatts (MW).

Consistent with Ordering Paragraph 21 of D.06-07-030, meetings of the Working Group were conducted in an effort to develop a consensus recommendation for the protocols to be used to allocate the DWR power charge exemption for the 80 MW of new municipal departing load (new

MDL). PG&E reports that because no consensus recommendation for these protocols has been reached, the IOUs propose that D.06-07-030 be modified to incorporate the protocols attached to the Petition.

The proposed protocols have been circulated to the Working Group for comment. PG&E indicates that the IOUs did not receive either confirmation that the recommended protocols are acceptable to the remaining members of the Working Group, or specific proposals for revision.

One topic in dispute among the Working Group was whether the protocols for new load should provide an option for MDL customers to choose whether or not to be exempt from the DWR power charge component of Cost Responsibility Surcharge (CRS). The IOUs believe that departing load customers are not entitled to such a choice. PG&E argues that under the Commission's decisions, direct access and departing load customers are either responsible for the costs of DWR power, or they are not.

For the allocation of the new MDL exemptions pursuant to 80 MW protocols, however, the IOUs express a willingness to agree to a "one time" choice to be invoked for each new MDL customer that falls under the operation of the protocols. The IOUs agree to this one time choice to be invoked at the time the new MDL comes into being "in the spirit of compromise," and incorporate this provision into their proposed protocols. However, the IOUs ask that such a choice, if adopted for new MDL, not be extended to other departing load customers who have been determined to be exempt from responsibility for DWR power costs.

The IOUs also propose that no departing load customers be allowed to choose whether to be exempt from DWR cost responsibility on a

periodic basis, arguing that the policy rationale for whether departing load customers should be responsible for DWR costs does not change from year to year. PG&E also claims that periodic changes in exemptions would further complicate administering the 80 MW cap and the billing process for these customers.

The California Municipal Utilities Association (CMUA) filed a response to PG&E's Petition on December 20, 2006. CMUA acknowledges that with the exception of limited matters, discussed below, the protocols presented by the IOUs are the product of drafts that were circulated among all the working group members.

CMUA states that the principal issue on which the POUs and IOUs disagree relates to the proposal that MDL customers must make a one-time choice as to whether or not to utilize the DWR Power Charge exemption at the time the new MDL customers come into being. CMUA indicates that POUs have expressed ongoing concern with placing MDL customers in a position in which they would be forced to make a choice as to whether or not to utilize a DWR Power charge exemption without having sufficient information as to the consequences of their choice.

CMUA argues that in establishing the rules governing the applicability of CRS exemptions, the Commission never anticipated that an MDL customer who applies for and utilizes such an exemption could pay significantly more in overall CRS obligations than an MDL customer who is not eligible for an exemption (or who did not choose to utilize an exemption). Yet, based on current market conditions, the MDL customer who pays only the competitive transition charge (CTC) (but is exempt from the DWR Power Charge) pays more than the customer who is responsible for the DWR Power Charge.

Discussion

We conclude that the protocols for administering the New Departing Load exemptions, as set forth in the appendix to this order, are reasonable and hereby adopt them. The adopted protocols generally incorporate the proposed protocols offered by PG&E, with certain clarifying edits.¹

CMUA, in its comments, asked the Commission to defer its decision on the “election issue” pending disposition of the Application for Rehearing of D.06-07-030. Since the Commission has now issued D.07-01-020, disposing of the Application for Rehearing, there is no need to defer a decision on the “election issue.” CMUA also asks that the IOUs be directed to engage in further meet and confer session on the “election issue” once the Application for Rehearing is decided. We find no useful purpose in directing the parties to engage in further meet-and-confer sessions to seek agreement on this issue. The record is sufficient to resolve parties’ disputes.

We adopt the proposal of PG&E for each MDL customer to elect on a one-time basis whether or not to utilize the CRS exemption. Granting each customer a one-time choice as to whether to utilize the exemption is reasonable and consistent with how previous Commission decisions have characterized the nature of the CRS exemption.

¹ Specifically, we incorporate the edits proposed by CMUA applicable to Footnote #2 and Step # 6 of the Protocols. We also revise the effective date for the POU to submit its estimate of new load for 2007 to May 1, 2007 since this Commission decision takes effect after the date originally proposed of March 1, 2007.

As noted by CMUA, we have previously characterized the CRS exemption as applying on a first-come, first-served basis to MDL entities that were eligible to apply for it. Thus, we did not mandate that the exemption apply automatically, nor as a default in the event an entity took no action to apply for it. Rather, we required that each MDL entity take affirmative steps to apply for and be granted the CRS exemption. We characterized the MDL exemption in this manner based on the assumption that those entities subject to the exemption would pay less than those without the exemption. Nonetheless, we did not adopt the rules governing the applicability of the exemption contingent upon a specific level of CRS or only where the exemption results in a lower overall charge. Therefore, although under current market conditions, the exemption may have effects on customers' bills that were unanticipated at the time that we originally adopted the exemptions and rules for applying them, such unanticipated effects do not invalidate the rules originally established for applying the exemptions. Accordingly, each MDL customer eligible for the exemption shall have the option to elect whether or not to apply for such exemption.

We authorize this one-time opportunity to make the election concerning the CRS exemption only to those MDL customers that are served by POU's as "new load" subject to the 80 MW cap. The one-time election is warranted for such customers as part of the initial establishment of protocols to identify and administer applicable CRS exemptions.

We agree with PG&E, however, that other departing load customers who have already been determined to be exempt from DWR power cost responsibility should not be permitted to elect an option to be subject to the DWR power charge. The principles previously applied concerning

departing load customers' exemption from the DWR power charge have not changed. Accordingly, we decline to grant other departing load customers the option to change their status regarding DWR power charge exemption.

An eligible customer makes the one-time election either to apply for the exemption or not, however, the customer should not be allowed repeatedly to switch back and forth in exemption status depending on whether or not the exemption produces a lower overall bill. The process for applying an exemption was not intended to be used as a gaming technique to avoid cost responsibility based upon fluctuating market conditions. Such gaming of the rules would not be fair to other customers or consistent with the intent merely to provide an orderly process for rationing limited exemptions. Once a customer makes the election, the customer should be held responsible for the results of that election, irrespective of how costs and market conditions may change over time.

We likewise decline to grant CMUA's request to allow for additional opportunities for electing to switch into or out of an exemption in the case of "new parties." CMUA defines the term "new party" situation as when a "person or agency with MDL leaves the premises with the MDL and another person or agency (New Party) assumes liability for the MDL at the same premises." CMUA argues that it would be unfair and unreasonable not to allow a New Party to exercise its own choice as to whether or not to utilize the exemption, and that otherwise, a New Party may be faced with future liabilities occasioned solely because of the prior party's choice.

We disagree with CMUA. When a customer vacates premises and a successor customer moves into those same premises, the successor customer typically becomes subject to the same terms, conditions, and

rates prescribed by the tariff that applied to the former customer. The applicability (or waiver) of an exemption that applies to service provided under a departing load tariff is just one of the terms that may apply under the tariff. The terms of IOU tariffs are applied on a nondiscriminatory basis, and are not applied selectively depending on whether a given customer has moved in recently or has been occupying the premises for a longer period. We find no valid rationale to single out one component of the tariff (i.e, the applicability of an exemption) to be treated differently from other components. The New Party should be aware of the obligations existing under the existing tariff. The applicability of the exemption should not be dependent upon whether or not there has been a turnover in the occupancy of a particular customer's premises.

4. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure.

Comments were filed on _____, and reply comments were filed on _____.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Thomas R. Pulsifer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Pursuant to D.06-07-030, Working Group meetings have been conducted in an effort to develop a consensus on protocols to be used to allocate the previously DWR Power Charge exemption consisting of a cap up to 80 MW of New MDL.

2. PG&E circulated a set of proposed protocols to allocate the 80 MW exemptions among Working Group members that was subsequently attached to its Petition for Modification of D.06-07-030.

3. There is no substantive disagreement among Working Group members concerning most of the proposed protocols, with the exception of the rights and obligations of MDL customers with respect to claiming any applicable CRS exemptions. CMUA also proposed clarifying edits to Footnote 2 and Step #6 which are not contested.

4. The Commission established the process for claiming exemptions under the presumption that customers subject to the exemption from the DWR Power Charge would pay less than customers that pay the CTC, but are exempt from the DWR Power Charge.

5. Although under current market conditions, the exemption may have effects on customers' bills that were unanticipated at the time the exemptions and rules for applying them were adopted, such unanticipated effects do not invalidate the rules originally established for applying the exemptions.

6. The CRS exemption was intended to apply on a first-come, first-served basis to eligible MDL entities, but we did not mandate that the exemption apply automatically, nor as a default in the event an entity took no action to claim it.

7. It is consistent with prior framework for establishing the CRS exemptions for each MDL customer served as "new load" eligible for the exemption subject to the 80 MW cap to have the option to elect whether or not to apply for such exemption on a one-time basis.

8. CMUA has not shown that a new entity occupying the premises previously occupied by an MDL customer who had made a particular

election regarding the CRS exemption should be granted the discretion to change the previous customer's election.

9. When a customer vacates premises and a successor customer moves into those same premises, the successor customer typically becomes subject to the same terms, conditions, and rates prescribed by the tariff that applied to the former customer.

Conclusions of Law

1. The Petition for Modification of D.06-07-030 of PG&E et al. for adoption of protocols for administering the New MDL exemptions should be adopted to the extent authorized below.

2. The clarifying revisions proposed by CMUA applicable to Footnote #2 and Step # 6 of the Protocols should be adopted as reasonable. The effective date for the POU to submit its estimate of new load for 2007 should be extended to May 1, 2007, since the Commission decision adopting these protocols will take effect after the date originally proposed of March 1, 2007.

3. The protocols as set forth in the appendix to this order are reasonable and should be adopted.

4. A one-time election as to whether to claim the DWR Power Charge exemption should be made available to MDL customers served as "new load" subject to the 80 MW cap.

5. The option to elect to change existing CRS exemptions should not be granted to other departing load customers for whom DWR power charge exemptions have already been determined.

6. MDL customers should not be permitted to repeatedly switch back and forth in their exemption status during future periods after an election

has been made in an attempt to game the results by shifting costs to other customers based on then-current market conditions.

O R D E R

IT IS ORDERED that:

1. The Petition for Modification filed by Pacific Gas & Electric Company on behalf of itself, San Diego Gas & Electric Company, and Southern California Edison Company for adoption of protocols to allocate the New Municipal Departing Load exemptions is hereby granted to the extent ordered below.

2. The protocols as set forth in the appendix to this order are hereby adopted.

This order is effective today.

Dated _____ at San Francisco, California.

APPENDIX

Recommended Protocols for New Departing Load

For new load, the Bypass Report shall serve as the source of the list of the individual publicly-owned utilities (POUs) whose new load customers are eligible for unlimited exemptions from the Department of Water Resources (DWR) power charge.

The POUs that serve new load but were not listed in the Bypass report have been allocated an exemption described in Decision (D.) 06-07-030 at page 46, and for convenience is referred to herein as the 80 Megawatt (MW) exemption.

In order to allocate the 80 MW exemption, it is necessary to complete the following steps:

1. Convert the 80 MW exemption into a MWh figure (see above);
2. Determine the list of POUs that serve load that is eligible for this amount;
3. Allocate the capped MWh amount between the eligible POU customers;
4. Ensure that the capped MWh amount is not exceeded.¹

Step #1: Conversion of MW Cap Into MWH Figure

The December 23, 2004 and January 26, 2005 ALJ Rulings called for the IOUs to “provide system average load factors...from which the applicable MW caps can be converted into a corresponding MWH figure.” PG&E and Edison provided preliminary load factor figures at the January 31, 2005 workshop and confirmed those figures in follow-up communications with the Energy Division.

- PG&E’s value was 49.6%
- Edison’s value was 55%

D.06-07-030 stated:

The December 23, 2004 ALJ Ruling also solicited comments on the appropriate methodology for converting the 80 MW cap into a MWh figure. In its January 14, 2005 opening comments, PG&E proposed that the 80 MW cap be multiplied by 8,760 hours per year, which should then be multiplied by a system average load factor.

¹ These Protocols do not address the level of the cap which is governed by applicable Commission orders, nor do they address the Protocols for Administering CRS Transferred Departing Load Exemptions, attached to D.06-07-030.

And that,

Accordingly, we shall delegate responsibility for administering this program to the Energy Division, and adopt PG&E's proposal as to the conversion of the 80 MW cap into a MWH figure.

- The average of the 2 values provided by PG&E and SCE is 52.3%
- Based on this the 80 MW cap translates to 366,518 MWh
(=80 MW x 8,760 hours x 52.3% load factor)

Step #2: Determine the List of POU's that Serve Load that is Eligible for the Capped Amount

Pursuant to Ordering Paragraph 5 and Ordering Paragraph 6 of D.04-11-014, the new load customers listed in the PG&E Bypass Report that are eligible for unlimited exemptions from the DWR power charge are those served by POU's listed in the PG&E Bypass Report, limited to the same geographical area in which the POU was to assume responsibility for transferred load (D.04-11-014, Finding of Fact 11), including:

5. In accordance with the PG&E Bypass Report, the CRS exception for MDL attributable to irrigation districts shall apply to at least the following: Modesto and Merced IDs, SSJID and Laguna ID.

6. In accordance with the Bypass Report, the exclusion attributable to municipalization as identified in the Bypass Report shall apply to MDL of at least the following three existing municipalities: Redding, Roseville, and Lodi and two potential municipalities: Davis and Brentwood.

Pursuant to Ordering Paragraph 11 and Ordering Paragraph 12 of D.04-11-014:

11. The publicly-owned utilities eligible to apply for the CRS exception on behalf of their MDL also must have been in existence on or prior to July 10, 2003, the issuance date of D.03-07-028, and serving at least 100 customers. The list of publicly-owned utilities who have already shown that they meet the criteria for eligibility to apply for any available CRS exception on behalf of their qualifying MDL are identified as follows:

- a. The eligible Municipal Utilities are: Alameda, Anaheim, Azusa, Banning, Biggs, Burbank, Calaveras, Colton, Glendale, Gridley, Healdsburg, Lodi, Lompoc, Los Angeles, Needles, Palo Alto, Pasadena, Pittsburg, Redding, Riverside, Roseville, Santa Clara, Shasta Lake, Tuolumne, Ukiah, and Vernon.
- b. The eligible Municipal Utility Districts are: Lassen and Sacramento.
- c. The eligible Public Utility Districts are: Trinity, and Truckee-Donner.
- d. The eligible Irrigation Districts: Imperial, Merced, Modesto, and Turlock.

12. Any entity that can show eligibility for exceptions granted in this decision and not listed in Ordering Paragraph 11 above must submit evidence pursuant to procedures that will be developed for the determination of eligibility consistent with today's decision.

Pursuant to Ordering Paragraph 12, the following entities have been granted eligibility to claim exemption from the MDL CRS on behalf of their customers:

- Hercules Municipal Utility
- Port of Stockton
- City and County of San Francisco
- City of Corona

There is no further opportunity to show eligibility pursuant to Ordering Paragraph 12.

Step #3: Allocate the Capped MWh Amount Between the Eligible POU Customers

Step #4: Ensure that the Capped MWh Amount is not Exceeded

Protocols for allocating the 80 MW exemption are set forth below. Nothing in these protocols shall be interpreted to require POUs to provide information to the IOUs or Energy Division beyond that which is already required pursuant to California Public Resources Code Section 25302.5.

Steps #1 through #4 listed below occur only once, while Steps #5 through #9 listed below occur annually, until the 80 MW exemption is fully allocated between eligible POU customers.

DATE	MILESTONE
	<u>Step #1:</u> Fifteen days following a Commission decision or other action adopting these protocols, each POU that is (1) serving new load but not listed in the Bypass report and (2) on the list of entities eligible for the 80 MW new load exemption will provide the Energy Division with an estimate of new load it currently serves as well as new load it believes it will begin to serve through the end of 2007 that the POU believes is eligible for the 80 MW new load exemption and will elect to use such exemption. ²
	<u>Step #2:</u> Within five business days after the POUs provide the estimates called for in Step #1, the Energy Division will compile and distribute the proposed list of exemption estimates to the IOUs to verify that the estimates are reasonable.
	<u>Step #3:</u> Within 10 business days after the Energy Division distributes the proposed list called for in Step #2, each IOU shall either: (1) report its agreement with the POU estimates, or (2) report mutual agreement with that POU on a different estimate, or (3) report its failure to reach agreement with the POU on the POU's estimate. In the event of a failure to reach agreement, the Energy Division will schedule a meeting or conference call with the particular IOU and POU in order to mutually resolve any discrepancies.
	<u>Step #4:</u> Within five business days of the final resolution of any disputes regarding the exemption estimates identified in Step #3, the Energy Division will finalize the list of POUs and exempted amounts. If the total estimate of exempted load exceeds the capped amount, the Energy Division will allocate the available kWh to each POU territory on a first-come, first-served basis based on the date that each POU began to provide electric service within such territory. The Energy Division will distribute this information to the affected POUs, IOUs and DWR; and post the estimate of

² In the case where a POU and IOU have reached a negotiated agreement regarding the billing and collection of the CRS, the POU shall report directly to the IOU, and the IOU will not need to receive information directly from the MDL customer. The process described in Step #1 assumes that the Commission will maintain a list of POUs whose customers have been determined to be eligible to claim exemption from the DWR Power Charge, and that eligible POU customers (or POUs acting on behalf of such customers) may elect whether to claim such exemption. This assumption is based on the Commission's language in D.04-11-014 and subsequent rulings, which separate the process of establishing eligibility for the new load exemption from the act of using or claiming such exemption. *See, e.g.,* D.04-11-014, Ordering Paragraphs 9-12. To the extent a POU has been authorized to act on behalf of its customers to elect whether or not to claim the new load exemption, the POU shall inform the affected IOU that it is so authorized within 30 calendar days of receiving such authorization.

DATE	MILESTONE
	remaining new load exemptions on the CPUC's public website.
	<p>Step #5: Starting May 1, 2007, and each year thereafter on March 1, each IOU shall, on or before March 1, provide the Energy Division with the amount of new load that (1) was actually served by a POU not listed in the Bypass report and on the list of entities eligible for the 80 MW new load exemption and (2) was eligible for the 80 MW new load exemption and actually elected to use such exemption in the previous calendar year.</p> <p>Each customer has a one-time opportunity to claim or reject its new load exemption. In other words, in Year 1, each customer eligible for the new load exemption will be offered the choice to claim or reject its exemption. If a customer elects to claim its new load exemption, that election cannot be changed in subsequent years. Similarly, if a customer elects not to claim its new load exemption, that election also cannot be changed. In Year 2, only those new load customers that are newly served by the POU and have not had the opportunity to make an election will be eligible to claim or reject their new load exemptions.</p> <p>These lists establish the allocation of the 80 MW exemption to the new load served by POUs. Once an exemption has been allocated to MDL of any given POU, such allocations shall not be subject to revocation.</p>
	<p><u>Step #6:</u> Starting May 1, 2007, and each year thereafter on March 1, each POU shall, on or before March 1, provide to the Energy Division with an estimate of the amount of new load that the POUs believe they will begin to serve in the current year and the following calendar year that is eligible for the 80 MW new load exemption and will elect to use such exemption that year.</p>
	<p><u>Step #7:</u> Within five business days after the POUs provide the estimates called for in Step #6, the Energy Division will compile and distribute the proposed list of exemption forecasts to IOUs to verify that the forecasts are reasonable.</p>
	<p><u>Step #8:</u> Within 10 business days after the Energy Division distributes the proposed list called for in Step #7, each IOU shall either: (1) report its agreement with the POU forecasts for the current year and following year, or (2) report mutual agreement with that POU on a different forecast for the current year and following year, or (3) report its failure to reach agreement with the POU on the POU's forecast for the current year and following year. In addition, each POU shall either: (1) report its agreement with the IOU's exemption figure for the previous calendar year, or (2) report mutual agreement with that IOU on a different exemption figure for the previous calendar year, or (3) report its failure to reach agreement with the IOU on the IOU's exemption figure for the</p>

DATE	MILESTONE
	previous calendar year. In the event of a failure to reach agreement, the Energy Division will schedule a meeting or conference call with the particular IOU and POU in order to mutually resolve any discrepancies.
	<u>Step #9</u> : Within five business days of the final resolution of any disputes regarding the POUs' exemption forecasts for the current year and following year and/or the IOUs' exemption figure for the previous calendar year, the Energy Division will finalize the list of POUs and exempted amounts for the previous calendar year, and finalize the list of POUs and exempted amounts forecast for the current year and following year. If the total exemption figures for the previous years plus the forecast of additional exempted load for the current year and following year exceed the capped amount, the Energy Division will allocate the remaining available kWh, after taking into account the total exemption figures for the previous years, to each POU territory on a first-come, first-served basis based on the date that each POU began to provide electric service within such territory. The Energy Division will distribute this information to the affected POUs, IOUs and DWR; and post the estimate of remaining new load exemptions on the CPUC's public website.

(END OF APPENDIX)

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability is current as of today's date.

Dated April 3, 2007, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

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Last Update on 30-MAR-2007 by: LIL
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